



Senate

General Assembly

File No. 125

January Session, 2005

Substitute Senate Bill No. 968

Senate, April 4, 2005

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR NURSING HOME EMPLOYEES WHO PROVIDE DIRECT CARE TO RESIDENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-491b of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) Any person who is licensed to establish, conduct, operate or
4 maintain a nursing home shall notify the Commissioner of Public
5 Health immediately if the owner, conductor, operator or maintainer of
6 the home, any person described in subdivision (3) of subsection (a) of
7 section 19a-491a, or any nurse, [or] nurse's aide or other direct care
8 provider has been convicted of (1) a felony, as defined in section 53a-
9 25, (2) cruelty to persons under section 53-20, or (3) assault of a victim
10 sixty or older under section 53a-61a; or has been subject to any
11 decision imposing disciplinary action by the licensing agency in any
12 state, the District of Columbia, a United States possession or territory

13 or a foreign jurisdiction. Failure to comply with the notification
14 requirement shall subject the licensed person to a civil penalty of not
15 more than one hundred dollars. As used in this section, "direct care
16 provider" means an employee, nursing pool employee or temporary
17 employee who provides hands-on-care, including, but not limited to,
18 feeding, bathing, toileting, dressing, lifting or moving a nursing home
19 resident.

20 (b) Each nursing home shall require [a] each person described in
21 subdivision (3) of subsection (a) of section 19a-491a, [or a] nurse, [or]
22 nurse's aide or other direct care provider to complete and sign an
23 application form [which] that contains questions as to whether the
24 person has been convicted of any crime specified in subsection (a) of
25 this section or has been subject to any decision imposing disciplinary
26 action as described in said subsection. Any person seeking
27 employment [in a position connected with the provision of care] in a
28 nursing home as a direct care provider who makes a false written
29 statement regarding such prior criminal convictions or disciplinary
30 action shall be guilty of a Class A misdemeanor.

31 (c) The Commissioner of Public Health shall require (1) each initial
32 applicant described in subdivision (1) of subsection (a) of section 19a-
33 491a to submit to state and national criminal history records checks,
34 and (2) each person offered a position as a direct care provider at a
35 nursing home to submit to a state criminal history records check. The
36 criminal history records checks required by this subsection shall be
37 conducted in accordance with section 29-17a. The cost of a state
38 criminal history records check required by this subsection for a person
39 offered a position as a direct care provider shall be paid by the nursing
40 home.

41 (d) If a nursing home receives notice of a state criminal history
42 record concerning a current or prospective direct care provider, the
43 nursing home shall make its determination concerning such provider
44 based on: (1) The level and seriousness of the crime; (2) when the crime
45 was committed; (3) the age of such provider at the time the crime was

46 committed; (4) the circumstances surrounding the crime; (5) the
 47 relationship between the crime and such provider's duties as a direct
 48 care provider; and (6) such provider's criminal and corrections record
 49 since the crime.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2005	19a-491b
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Statement of Legislative Commissioners:

In subsection (d) references to "the applicant's" were changed to "such provider's" for clarity and consistency throughout the bill

AGE *Joint Favorable Subst. C/R*

PH

PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Public Safety, Dept.	GF - Cost	32,063 - 64,126	42,750 - 85,500
Public Safety, Dept.	GF - Revenue Gain	187,500 - 375,000	250,000 - 500,000
Public Health, Dept.	GF - Cost	See Below	See Below
Social Services, Dept.	GF - Cost	Potential	Potential
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	7,262 - 14,524	23,047- 46,094

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill requires each person offered a position as a direct care provider at a nursing home, effective October 1, 2005, to submit to a state criminal history records check. This will result in a cost to the Department of Public Safety (DPS) and a revenue gain to the General Fund.

Department of Public Safety

An estimated 25,000 direct care employees, as defined in the bill, are offered employment by nursing homes in Connecticut each year. Of these, 15,000 are direct hires and the remaining 10,000 are nursing pool employees. An indeterminate, but potentially significant percentage of the direct hires are currently subjected to state criminal history records checks at the request of nursing home operators.¹ However, individuals retained from nursing pools would not be subjected to

¹ The DPS processes approximately 200,000 name and date of birth checks annually. The department does not compile data on the reasons for requests submitted by non-governmental entities.

similar checks at the time of employment by a nursing home.

A minimum of 10,000 additional checks annually would therefore be needed. As the upper limit cannot be definitively established, an assumption is made that a maximum of 20,000 would be required. Under this scenario, one-third of direct hires would currently be subjected to state criminal history records checks.

In order to meet this additional workload, the Department of Public Safety (DPS) would require one to two (1 - 2) additional Processing Technicians. An FY 06 cost of \$32,063 - \$64,126 would be associated with three-quarter year support of these positions. In FY 07 and subsequent fiscal years an annualized cost of \$42,750 - \$85,500 would be incurred. Fringe benefit costs of \$7,262 - \$14,524 in FY 06 and \$23,047 - \$46,094 in subsequent fiscal years would also result.²

A General Fund revenue gain of \$187,500 - \$375,000 in FY 06 and \$250,000 - \$500,000 in FY 07 and subsequent years would be associated with the collection of a \$25 fee for each state criminal history records check.

Department of Public Health

The bill states that the Department of Public Health (DPH) must require a person offered a position as a direct care provider at a nursing home to submit to a state criminal history records check. Assuming that the prospective employer submits the request to DPS directly, no administrative costs will ensue for the DPH. It is further assumed that the department would bear no responsibility for verifying that a records check of a person offered employment has been done.

² The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

However, should the bill be interpreted to require the department to act as the requesting party, significant additional staff resources would be needed.

It is further anticipated that the DPH will pursue investigations in response to reports by nursing home owners of direct care providers who have been convicted of a felony, cruelty to persons or assault of a victim sixty or older; or who have been the subject of a disciplinary action to the extent that its resources allow. A potential minimal revenue gain would result from fines imposed upon persons violating the mandatory notification requirement.

Department of Social Services

The cost of the state criminal history records check is to be paid by the nursing home. To the extent that the portion of these costs attributable to Medicaid funded residents is passed through to the state through future Medicaid rate increases, additional costs to the Department of Social Services will result. Approximately seventy percent (70 %) of nursing home days are Medicaid funded. Any such increased costs will be eligible for fifty percent (50 %) reimbursement from the federal government.

OLR Bill Analysis

sSB 968

AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR NURSING HOME EMPLOYEES WHO PROVIDE DIRECT CARE TO RESIDENTS**SUMMARY:**

This bill requires anyone offered a position as a direct care provider in a nursing home to submit to a state criminal history record check. The nursing home must pay the cost of the check, which is \$25. It also requires applicants for such positions to disclose on the application whether they have been convicted of certain crimes or subjected to licensing agency disciplinary actions. It requires nursing homes, in making employment decisions about current or prospective direct care providers for whom they have received notice of a state criminal history record, to base their decisions on the seriousness of the crime and other specified factors.

The bill further requires nursing homes to notify the public health commissioner if any of their direct care providers have been convicted of certain crimes or subjected to disciplinary actions by licensing agencies.

It defines "direct care provider" as an employee, nursing pool employee, or temporary employee who provides hands-on care, including feeding, bathing, toileting, dressing, lifting, and moving residents.

EFFECTIVE DATE: October 1, 2005

CRIMINAL HISTORY: DIRECT CARE PROVIDERS

Under the bill, the Department of Public Health (DPH) must require each person offered a position as a direct care provider in a nursing home to submit to a state criminal history record check. This is done through the State Police Bureau of Identification in the Department of Public Safety. The bill requires the nursing home to pay the \$25 fee for the background check. Nursing home owners, board members, and

partners; certain large stockholders; certain management personnel; the medical director; and the director and assistant director of nursing must already undergo both state and national criminal history record checks.

DIRECT CARE PROVIDERS' DISCLOSURE OF CRIMES ON APPLICATION

The bill also requires each nursing home to require anyone applying for a direct care provider position to disclose on the signed application whether he has been convicted of certain crimes or subjected to disciplinary actions by licensing agencies (presumably DPH or similar entities in other jurisdictions). The same individuals listed above who are currently subject to criminal history record checks, as well as nurses and nurse's aides, must already make this disclosure.

Under current law, if a person seeking employment in a position connected with the provision of care makes a false written statement regarding a prior criminal conviction or disciplinary action, it is a Class A misdemeanor, which calls for a penalty of imprisonment for up to one year, a fine of up to \$2,000, or both. The bill instead applies this penalty to written false statements by the newly defined group of "direct care providers."

NURSING HOMES' EMPLOYMENT DECISIONS

The bill requires a nursing home, if it receives notice of a state criminal history record for a current or prospective direct care provider, to make its employment decision based on:

1. the level and seriousness of the crime,
2. when the crime occurred,
3. the provider's age when the crime occurred,
4. the circumstances surrounding the crime,
5. the relationship between the crime and the provider's duties, and
6. the provider's criminal and corrections record since the crime.

NURSING HOME NOTIFICATION TO DPH OF CURRENT DIRECT CARE PROVIDERS' CONVICTION OF CRIMES OR DISCIPLINARY ACTIONS

The bill also requires nursing home owners and operators to notify the public health commissioner immediately if any of their direct care providers have been convicted of certain crimes or subjected to disciplinary actions by licensing agencies. They must already do this for the nursing home's owners, board members, and partners; certain large stockholders; certain management personnel; the medical director; director and assistant director of nursing; nurses; and nurse's aides. Failure to notify is subject to a civil penalty up to \$100.

The crimes referred to include any felony (an offense for which the punishment can be a prison term of more than one year), cruelty to persons, or assault of a victim age 60 or older. The disciplinary actions by licensing agencies cover agencies in any state, the District of Columbia, a U.S. possession or territory, or a foreign jurisdiction.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference

Yea 12 Nay 9

Public Health Committee

Joint Favorable Substitute

Yea 23 Nay 0